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No. 80-2177

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MARJORIE LEHMAN, on behalf of her children, WILLIAM LEHMAN, MARK LEHMAN and FRANK LEHMAN,
Petitioners,

—v.—

LYCOMING COUNTY CHILDREN'S SERVICES AGENCY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT

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v.

LYCOMING COUNTY CHILDREN'S SERVICES AGENCY,

Respondent.

BRIEF FOR RESPONDENT

Respondent, Lycoming County Children's Services Agency, respectfully prays that this Court affirm that there is no jurisdiction under the federal habeas corpus statute in parental right termination matters under state law.

The Third Circuit Court of Appeals, sitting en banc, on March 31, 1981, affirmed the Order of the United States District Court of the Middle District of Pennsylvania, entered on September 4, 1979, dismissing the Petition for Writ of Habeas Corpus. The text of the Third Circuit Court of Appeals decision is set forth at 648 F.2d 135, and in Petitioners' Appendix, Pages 1a to 90a. The text of the Middle District of Pennsylvania is contained in Petitioners' Appendix, Pages 135a to 149a.

COUNTERSTATEMENT OF THE CASE

On June 3, 1976, the Lycoming County Orphans' Court entered an Order involuntarily terminating Marjorie Lehman's parental rights to her three sons, pursuant to the Pennsylvania Adoption Act of 1970, 1 Pa. Statute Section 311 (2) (Lehman Brief, page 5). Petitioner had placed her three sons in the care and custody of the Respondent in June, 1971, when the boys were respectively one, five, and seven years of age, and they have not resided with her since that time.

Petitioner's oldest child, Carol born 9/30/60 has resided with the Petitioner's parents for many years and there is no plan for her ever to return to Marjorie

Lehman's home.

After the birth of the Petitioner's youngest child, Tracie, in September, 1971, Marjorie Lehman, by her own decision, chose an apartment in which she still resides, which she acknowledges is not adequate for the return of the three boys. Several Lycoming County social service agencies worked with Marjorie Lehman from January, 1971 to the time of the Orphans' Court hearing in the Spring of 1976, in an effort to reunite the family. These agencies included Nutrition Aides who were in her home at least monthly for a five-year period, stressing and educating her in regards to proper food menus, nutrition guidelines, budgeting and every day problems and concerns (Orphans' Court Transcript, hereinafter O.C.T., pages 55-59). Nutrition Aides and Supervisors stated from their observation that Marjorie Lehman would not be able to physically or emotionally take care of all of the children (O.C.T., page 58).

There was extensive testimony at the Orphans' Court hearing by Dr. Jacqueline B. Sallada, a court-requested psychologist, concerning evaluations which she had done with Marjorie Lehman in January, 1976. Dr. Sallada found that Marjorie Lehman had a ratio IQ of forty-three (O.C.T., pages 34-35), and she "was socially

functioning in the terms of self-help skill and independent skills at about the 12½-year level, and that intellectually.... at the level of a six-year old child." (O.C.T., page 31) Observation of Marjorie Lehman during times of visitation with her boys, showed that it was general havoc or "free for all", and even the older boy, Frank, acknowledged that his mother could not and would not be able to control the boys' actions. (O.C.T., page 117)

Dr. Sallada, in interpreting the results of the various tests that she gave to the natural mother, questioned her adequacy in basic housekeeping tasks, such as cooking and cleaning, and of her discipline methods. (O.C.T., pages 33,34,46) The mother's functioning level of twelve years, six months, mental age of six years, and ratio IQ of forty-three raised serious questions of her maturity to handle a household and family of more than one small child. The Nutrition Aides expressed serious reservations of her ability to handle money (O.C.T., pages 58,62,68,73), to provide proper health care, as seen by the lice incident (O.C.T., pages 57,61,68), and to take care of all of the children (O.C.T., pages 58,70,71). When discussing the boys, the mother exhibited a lack of knowledge or concern in their present school status and hobbies (O.C.T. at page 106), and of their re-

spective ages and emotional development (O.C.T. at page 107.)

The testimony and record in this particular matter reveals that the natural mother, Marjorie Lehman, voluntarily placed the three (3) boys in the custody of the Children's Service Agency approximately five (5) years before the termination hearings were held in May, 1976; that since the placement, all of the children have remained in foster homes; that at the time of the placement of the three (3) boys, the mother was unable to provide essential parental care and subsistence necessary for their physical and mental well-being; that she had known that better housing and necessity of proper care and control of the boys was essential for their return; that she had been unable to or failed to make progress towards doing so; that the causes of her inability or failure to achieve these goals and standards are primarily her limited intellectual capabilities, her lack of skills essential to the rearing of the children, as well as a lack of initiative or ability to progress in programs or opportunities which provide such skills; and that she lacked the capacity to even recognize the need of emotional and intellectual stimulation for the boys. Surely, emotional and mental deprivation and injury

may be as crippling to a young child in his formative and teenage years as physical abuse and neglect, if not more devastating. Herein, lies the crux of the evidence in the Lehman terminations.

The three boys were interviewed by the lower court on the record in May, 1976, and in the presence of the attorney for each party. William, age 10, and Frank, age 12, expressed love for their natural mother, but minimal concern that there would be no further visitation if the termination were granted; the youngest, Mark, age 6, appears to have little or no emotional attachment to his mother. It is difficult to determine whether the expression of the two older boys represent a real desire on their part to maintain a relationship with their natural mother, pointing towards an eventual return; or whether, on the other hand, these expressions represent a grasping on the part of the children to maintain a permanent seat in their family status, a need and desire that could be satisfied by the eventuality of adoption for all of these boys. Frank and William, in January, 1977, expressed no interest in seeing their mother, and Mark was noncommittal (see, Respondent's Exhibit "A", attached to this Brief).

The Lycoming County Orphans' Court terminated

the parental rights of the natural mother to the three boys. This decision was affirmed by the Pennsylvania Supreme Court in a wide-ranging review and decision based upon the natural mother's repeated and continued incapacity which could not be remedied, that caused the boys to be without essential parental care or control necessary for their physical and mental well-being. The Pennsylvania Supreme Court directly and firmly upheld the constitutionality of the Pennsylvania Adoption Act and recognized the state's constitutional interest in the welfare of the children and rejected Petitioner's argument that the Pennsylvania statute required a showing of a substantial degree of misconduct. (In Re: William L., 383 A.2d 1228, 477 Pa. 322 (1978)).

A Petition for Writ of Certiorari rather than a Direct Appeal on the constitutional issues, was then filed with the U.S. Supreme Court by Marjorie Lehman (and by a Gladys Beatty, a companion case to the Pennsylvania and U.S. Supreme Court), and the Petition was denied on October 2, 1978. (Marjorie Lehman v. Lycoming County Children's Services, et al, No. 77-1704, 439 U.S. 880 (1978)). This present proceeding for a Writ of Habeas Corpus was filed on January 16, 1979, and was dismissed in Judge Malcolm Muir's Opinion dated Sep-

tember 4, 1979 (Petitioner's Appendix, Pages 135a to 149a). Thereafter, an appeal was lodged, briefs filed, and argument made to the Third Circuit Court of Appeals. On July 13, 1980, a three judge panel of the Third Circuit Court reversed the District Court. Thereafter, the judgment was vacated and rehearing en banc granted on August 15, 1980. After reargument on November 17, 1980, the Third Circuit Court, sitting en banc, affirmed the Order of Dismissal of the Writ of Habeas Corpus by the District Court by their Opinion of March 31, 1981. Petitioner's Petition for Writ of Certiorari to this Court was filed on June 24, 1981, and granted October 5, 1981.

As of January 1982, the boys, Frank, William and Mark, are aged respectively 18, 16, and 12. None of the three boys has been adopted because of these ongoing legal procedures since May, 1976.

SUMMARY OF ARGUMENT

There is no statutory, common law or clear decisional holding that renders jurisdiction appropriate and justifiable in a parental rights termination matter under state law leading to an adoption of minor children. The lower federal courts, after thorough and analytical

review of this Pennsylvania parental rights termination case firmly set forth that no jurisdiction exists in this type of matter.

Initially, Petitioner Marjorie Lehman possesses no legal standing to seek habeas corpus relief on behalf of the minor children. The children's interests are separate and apart from hers and they have the right to maintain their stabilized relationships nurtured over a period of years. Indeed, the minor children are not "in custody" within the meaning of 28 U.S.C. Section 2254, as historically created by Congress and presently interpreted by this Court, as the boys' liberty has not been hampered and there is a total lack of state restraint exercised upon them.

To extend habeas corpus jurisdiction within this new area of state-regulated adoption matters would require that federal courts also grant jurisdiction in private child custody disputes. The alleged unconstitutionality of the Pennsylvania statute herein, as well as similarly enacted state laws, can be more efficiently reviewed and determined by existing federal court jurisdiction, then through application of the federal habeas corpus statute.

Fundamentally, the granting of federal habeas corpus jurisdiction in a parental rights termination matter

will substantially interfere with legitimate state interests as well as the proper balance between federal and state courts. Society and a child's interest in finality of litigation will best be served by the rejection of jurisdiction under the habeas corpus statute, and lead to surer stability of family relationships and protection of essential and basic rights of freedom and liberty.

ARGUMENT

28 U.S.C. SECTION 2254 DOES NOT VEST FEDERAL COURTS WITH JURISDICTION TO ISSUE WRITS OF HABEAS CORPUS IN PARENTAL TERMINATION MATTERS UNDER STATE LAW LEADING TO ADOPTION OF MINOR CHILDREN.

A. Introduction

There is no statute which has been passed by the United States Congress, no decision of this Court, no common law right, and no clear enunciation by the Federal Courts that would render jurisdiction appropriate and justifiable in a case such as this one. Indeed, issues involved in parental termination matters leading to an adoption of minor children under state law are such that state courts are inherently equipped and best

suited to deal with, and ones which federal courts should not.

A Federal Court must look to the provisions under 28 U.S.C. Section 2241 and Section 2254, for Habeas corpus jurisdiction. Indeed, "(f)ederal courts do not have jurisdiction to make a custody determination every time it is asserted that a person's custody is wrongful." Anh v. Levi, 427 F. Supp. 1281, 1286 (1977). Additionally, not every Federal claim can be raised again nor should every litigant have a federal forum in which to appeal. (See Stone v. Powell, 428 U.S. 465 (1976); Allen v. McCurry, 449 U.S. 90 (1980)) Most directly, Petitioner Marjorie Lehman seeks Federal review of an Orphans' Court proceeding and subsequent Pennsylvania Appellate proceedings, including denial of a Writ of Certiorari to the United States Supreme Court. (See In Re: William L., et al, 383 A.2d 1228, 477 Pa. 322, U.S. Cert denied 439 U.S.880 (1978)). The Anh v. Levi, decision sets forth several bases upon which state procedures and remedies are more effective than Federal review in dealing with this prelude to adoption proceedings. Id. 427 F. Supp. at 1288-89.

Briefly and succinctly stated, the issues and position of Marjorie Lehman have been well and thoroughly

argued from the Orphans' Court of Lycoming County, Pennsylvania during the summer of 1976, through and including the very thorough and well presented brief of the Petitioners herein, in December, 1981. The closest analogous case to this Lehman matter is the First Circuit decision in Sylvander v. New England Home for Little Wanderers, 584 F.2d 1103, (1978), which was thoroughly argued, discussed, and formed a firm foundation for both District Judge Malcolm Muir's initial denial of the Petition, and ultimately the holding of the Third Circuit Court, sitting en banc, which is the subject of this matter. The only District Court to hold (by a 13 to 11 vote decision) that habeas corpus jurisdiction does lie is the United States Court of Appeals for the Fifth Circuit, and which is pending decision on a submitted Writ of Certiorari (See Davis v. Page, 640 F.2d 599, (5th Circuit, 1981); Petition for Cert. pending, Chastain v. Davis, No. 80-1888). However, both the majority decision in Davis and the vigorous dissent, refer to the original panel decision in this Lehman matter dated July 13, 1980 (See Davis, 640 F.2d at 602 and 606). The Davis case raises both the habeas corpus jurisdiction issue and the question of whether counsel for parents in neglect proceedings is constitutionally mandated. (See Lassiter v. Department

of Social Services, 452 U.S._____,101 S.Ct. 2153, 68 L.Ed.2d 640(1981)). At this time, their Petition for Certiorari is still pending before this Court.

Therefore, the First and Third Circuits squarely have ruled that no habeas corpus jurisdiction lies in parental termination cases, and the Fifth Circuit's decision was based upon a vacated judgment and opinion overruled, en banc. This Court should decisively, and within the confines of the present federal law, statutes, and decisions affirm the determination of the Third Circuit Court that "custody disputes of the nature addressed here and which essentially involve no more than the question of who shall raise a child to maturity, do not implicate the federal interest in personal liberty sufficiently to warrant the extension of federal habeas corpus." Lehman, 648 F.2d at 136. A full and thoughtful reading of the thorough Third Circuit decision herein, contains the firmest foundation upon which this Petition should be rejected by this Court.

B. THERE IS NO HABEAS CORPUS JURISDICTION FOR STATE-COURT PARENTAL RIGHTS TERMINATION MATTERS COGNIZABLE UNDER 28 U.S.C. SECTION 2254, WHEN BROUGHT BY A NATURAL PARENT ON BEHALF OF MINOR CHILDREN.

1. Petitioner Marjorie Lehman has no legal standing to seek habeas corpus relief on behalf of the minor children involved herein.

The crux of the state court proceedings was a judicial determination that the natural mother could not and should not regain custody of her three minor sons, and thereby ended any legally enforceable relationship that she would have with the boys. This issue of standing was raised by this Respondent in its "Response" filed to the initial Petition for Habeas Corpus filed by Marjorie Lehman in the Middle District Court of Pennsylvania, as follows:

> "10. Petitioner herein, Marjorie Lehman, has no standing to bring this Petition for Habeas Corpus on behalf of the minor children herein, as there is no legal relationship existing between she and the minor children."

This standing issue was not certified by this Court in its grant of certiorari in October, 1981. However, it is closely related to the determination of the basic issue and was dealt with at length in the Third Circuit, concurring opinion of Judge Adams which was joined in by three of the judges (See Lehman, 648 F.2d at 146), and

argued by the Petitioner Marjorie Lehman.

Petitioner Marjorie Lehman in the brief filed on her behalf cites two leading criminal matters, Gilmore v. Utah, 429 U.S. 1012 (1976), and In Re: Gault, 387 U.S. 1 (1967), in support for her Petition filed herein, on behalf of the minor boys. Those cases are clearly criminal in nature, and distinguishable in legal effect. Herein, federal courts are being urged to approve a long floodgate of cases which the habeas corpus statute was not designed to oversee. Petitioner has urged these cases on the lower federal courts since January, 1979, and these criminal or quasi-criminal cases do not provide the firm foundation upon which habeas jurisdiction can be placed. (See slip Opinion by Malcolm Muir, Middle District Judge, under Civil No. 79-65; Petitioner's Appendix, pages 135a to 149a.)

Petitioner's citations of "third-Party standing" cases (Petitioner's Brief, pages 42-43) do not support his argument that "natural parents are routinely recognized as appropriate habeas corpus petitioners" dealing with children's liberty interest. All of the cited cases are clearly distinguishable from the basic jurisdiction issue herein, in that they do not deal with the parent-child relationships nor with litigation in which legal rights

have been judicially terminated as in this Lehman matter.

As Judge Adams of the Third Circuit Court expressed:

> '...(I)t is important to recognize that parents and children do not have identical interests... (T)he children have independent, private interests not necessarily shared by the parents, just as the parents have interests in the children that are not reflected by the children themselves." (Lehman 648 F.2d at 152.)

Judge Adams further focuses on the prayer of the habeas corpus petition filed by Marjorie Lehman, and directly notes that:

> "(S)he is not, in this proceeding, attempting to prove her fitness as a parent or even her right to permanent custody of the children. Rather, she is attacking the state standard under which she was adjudicated "incapacitated"...In contesting the state statute which already embodies a balance between the needs of the parent and the child, Mrs. Lehman is potentially undercutting the child's right and interest in a minimum parent-child relationship." (Lehman, 648 F.2d at 154.)

Initially, Judge Adams holds that "it would appear to be both unwise and impolitic for the federal courts to

uncover a whole new font of jurisdiction at this time," by entering the realm of state controlled adoption matters. (Lehman, 648 F.2d at 151) He further writes that even if the federal court had jurisdiction in this case, it remains undisputed that children have interests separate and apart from their parents and the state itself has an interest in a child's welfare. Particularly herein, where the children have expressed a desire not to live with their mother and have stabilized relationships with foster families their interest and that of the main Petitioner, natural mother, are in conflict.

Indeed, the Petitioner – mother's argument can be seen as an attempt to continue an ill-advised presumption that children are the property of their parents. Justice Roberts, speaking for the majority in the Pennsylvania Supreme Court decision, quoted with favor Chief Justice Burger's statement in Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972):

> "To be sure, the power of the parent even when linked to a free exercise claim, may be subject to limitation....if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burden." Id. 406 U.S. at 233-34, 92 S.Ct. at 1542. (See also, Moore v.

City of East Cleveland, Ohio, 431 U.S. 494, 499, 97 S.Ct. 1932, 1936, 52 L.Ed. 2d 531 (1977); Lehman, 648 F.2d at 152; In Re: William L., 383 A.2d at 1234.)

The Pennsylvania Supreme Court while acknowledging that parental rights must be accorded significant protection, particularly as interpretated by this Court, also reiterated that these parental rights must yield to a child's essential health and safety needs, and the state may intervene to protect its weaker members, such as infants. (In Re: William L., 383 A.2d at 1236.)

Judge Adams raises an additional and very crucial aspect: that is the "interest in finality." Petitioner's attorney in his Brief to this Court notes that Judge Garth and Judge Adams "overlook the fact that the children did desire a continuation of the family relationship.... (and were) unaware of the boys' desire to visit with their mother." (Petitioner's Brief, page 21 and 22, fns. 5 and 6) Petitioner's attorney then saw fit to file a certified copy of the Orphans' Court hearing transcript, and cite portions thereof, dealing with the issue of visitation. Respondent refers this Court to Exhibit "A", attached to this Brief, which directly responded to Petitioner-mother's effort for continuing visitation prior to review by the

Pennsylvania Supreme Court in 1977. This particular aspect of continuing visitation, helps to crystalize in this Lehman matter—and more broadly in all termination matters— that the children's interest in finality of litigation or the opportunity to be accepted into a stable and loving family focuses the vast difference in respective interests between a Petitioner-mother and purported "Petitioners – children."

The 1970 Pennsylvania Adoption Act under which this matter evolved was revoked, and is now codified in the Pennsylvania Adoption Act of 1980, October 15, P.L. 934, No. 163, effective January 1, 1981 (23 Pa. C.S.A. §2101, et seq.). The present Pennsylvania law continues the right to appointed counsel for a natural parent who cannot afford to retain one, and now requires the appointment of an attorney for a child in involuntary termination matters (23 Pa. C.S.A. §2313). (See also Lassiter, 101 S. Ct. 2153, 2162, fn. 7 and text.) On this very significant issue of legal standing, Pennsylvania has the statutory provision and judicial mechanism to protect the interests of the minor children. There is no need for federal courts to oversee state termination matters on behalf of minor children, as the state courts must be satisfied that the minor's rights are

not being disregarded (In Re: William L., 383 A.2d at 1235, 1236). A review of the Pennsylvania Supreme Court decision, written by Justice Roberts will also verify that the mother's interest and the children's interest were vastly different, and that the seeking for finality of decision was carefully weighed using a proper constitutional gridwork. Initially, this fundamental basis of Marjorie Lehman's standing to bring a suit on behalf of the children must be resolved in favor of the children, and the decision of the Third Circuit Court upheld on this basis alone.

2. The minor children are not "in custody" within the basic and clear meaning of 28 U.S.C. Section 2254.

Fundamentally, this habeas corpus petition must fail because the custody requirement is not met and cannot be met in a case such as this. The Federal habeas corpus statute, as presently interpretated, provides an opportunity to test the restraint of liberty of an individual, and the right to be free, specifically through any unconstitutional practices. A major aspect and question arises as to whether any person is in "custody" herein; the three Lehman boys were voluntarily placed with the

County Agency, and have resided in foster homes within the community since June, 1971. We are dealing with a county agency that works directly with parents and children, in a more direct sense, serving families than even private organizations as were examined in the Sylvander case.

This Court is urged to affirm the very careful evaluation and analysis of this crucial aspect of "custody" which has been enunciated by all of the lower federal courts. Judge Garth concludes "that custody disputes of the nature addressed here and which essentially involve no more than the question of who shall raise a child to maturity, do not implicate the federal habeas corpus." (Lehman, 648 F.2d at 146.) Further, "(t)he "custody" of a foster or adoptive parent over a child is simply not the type of custody that may be challenged through federal habeas." (Id, 648 F.2d at 142; see also Davis v. Page, 640 F.2d at 605,607, dissenting Opinion.)

Again, Petitioner's attorney attempts through the citing of criminal or quasi-criminal matters to justify this significant aspect of custody under the habeas corpus statute. (Petitioner's Brief, pages 50-51) Initially, Petitioner-mother sets forth a number of cases which clearly and through examination involve adjudication

and disposition of delinquent children in Juvenile Court hearings which by statute and case law are quasi-criminal proceedings with all requirements of due process guaranteed. Historically, statutorily and by decisional law, Federal habeas corpus has laid in criminal settings. Secondly, Petitioner purportedly sets forth several other cases in which habeas corpus has been the "vehicle to free individuals" in the child custody context. In examination of several of these cases – Young v. Minton, 344 F. Supp. 423 (W.D. Kentucky 1972); U.S. ex rel Cobell v. Cobell, 503 F.2d 790 (9th Cir. 1974); Application of Reed, 447 F.2d 814 (3rd Cir. 1971), it is recognized that all deal with father-mother child custody matters wherein a non-custodial parent violated a valid Court Order and removed children; Court proceedings were in the nature of contempt inquiries, and jurisdiction was based thereupon. Wisconsin Potowatomies v. Wilsey, 377 F. Supp. 1153 (M.D. Florida, 1974), is an adoption case involving Indian children removed from parents in Michigan, and placed for adoption in Florida; the case rested upon requiring exhaustion of state remedies, and did not reach the jurisdiction issue. Indeed, all but the Application of Reed case cited by Petitioner at this point, involved Indian tribal matters,

and specifically focused upon the special body of law and Court procedures dealing with this segment of American history and society. In our view, these cases are clearly distinguishable, and provide no support for Petitioner's urging that this Court assume jurisdiction in this Lehman habeas corpus matter. (Sylvander, 582 F.2d at 1116)

The specific issue addressed in both the Davis v. Page, Supra, and Smith v. Edmiston, 431 F. Supp. 941 (W.D. Tenn. 1977) cases is the failure in the lower state courts to appoint attorneys for the indigent parents involved therein. This Court spoke to that issue in its Lassiter decision last term. (See also, Besharov, Douglas J., "Terminating Parental Rights: The Indigent Parent's Right to Counsel after Lassiter v. North Carolina", 15 Family Law Quarterly 205 (Fall, 1981). Many of these cases were cited before Judge Muir in the Federal District Court, and again argued before the Third Circuit Court, prior to both of these courts rejecting the Petition under the habeas corpus statute. As pointed out by Judges Garth and Adams, these cases are of little persuasive value. (Lehman, 648 F.2d at 141, 150, 152).

Petitioner's attorney next asserts that through termination of parental rights the boys are directly subject

to restraints on their physical freedom which would buttress a need for habeas corpus jurisdiction. This is simply not the case. The boys' liberty has not been impaired, and indeed they have grown into active, healthy and intelligent young men having the freedom to come and go as they choose in stable and normal family settings. The two youngest boys have been in the same foster homes for over ten years, which will probably be the adoptive homes, and in no sense and no aspect are they in state institutions or under restraint.

The absence of physical restraints and the boys' emotional stability were substantially increased through the termination of parental rights in 1976, in that they were freed from further concern that they would be placed back into or even visiting their mother's home, and that they could justifiably be anticipating adoption in the near future. Indeed, their physical well-being and mental states have been hampered by the ongoing litigation herein. This can be most clearly identified through the reality that the oldest boy, Frank, in 1976 was exhibiting behavioral problems in the foster homes and school up to the 1976 hearing. Additionally, after having been in foster care for a period in excess of 10 years Frank has now reached his majority (on December 22,

1981) and can make his own decision whether he can be adopted, without necessity of consent by a parent. (Pennsylvania Adoption Act of 1980, Section 2713(1)). The total reality of this particular phase of this case through consideration of the federal habeas corpus statute can be seen for the youngest boy, Mark, now age 12; he has been in a foster home since age 1. (See Lehman, 648 F.2d at 154, fn. 48) The Petition for habeas corpus itself in 1979, recognized that physical custody of the boys would probably not be returned to Marjorie Lehman. This aspect of their custody being in limbo, is a far greater restraint on their future well being than any purported dominion exercised by a state or county agency. Unlike prisoners in state or federal jails, or even juveniles in a state home or under necessary probation officers, minor children awaiting adoption have no restraint on their liberty but simply the security of loving and stable parental guidance, control, subsistence, and discipline necessary for their physical, mental and emotional well-being. Totally unlike Gary Gilmore, the boys could not even reject the application on "their behalf", other than awaiting final decision by the courts.

Presumably, federal habeas corpus would operate to

release and to test confinement, and in this setting, to directly benefit the children. Here there can be no allegation of benefits to the boys, or that their rights, liberties or opportunities are being considered or handled. (Lehman, 648 F.2d at 142, 144) Indeed the direct conversation with the boys and the state trial court over 5 years ago showed no semblance of stress or emotional trauma to the boys. In fact, the boys' interest would be better served through a stable and legally recognized home and family, by ending this proceeding at this point. Again, habeas corpus jurisdiction must fail because of the absence of the required "custody" necessary for federal courts to intervene on this very sound and thorough state court decision.

3. Petitioner's cause of action would extend federal habeas corpus relief to intrafamily disputes.

The effort by the Petitioner's attorney to differentiate between state initiated and private custody matters is precarious and ill-conducted. Certainly, the rights of private litigating individuals should not be subrogated and diminished because there is allegedly no state or governmental party involved. As argued both in the

Lehman decision involved herein, and the Sylvander case, by paving the way for federal habeas corpus jurisdiction in this type of matter, private combating parents in child custody matters could quickly enter into the federal court arena also. (Sylvander, 584 F.2d at 1112; see also Davis v. Page, 640 F.2d at 607.) Petitioner's allegations of unconstitutionality of the Pennsylvania statute in order to justify restricted jurisdiction, have been raised before. All of these constitutional issues, without exception, have been thoroughly urged, argued, briefed, discussed, and expressly rejected in the five-year history of this same proceeding. Indeed, Petitioner's arguments on these issues prior to the foundation of the Federal Court's jurisdiction to even entertain the hearing on habeas corpus, appears premature. Upon the very thorough and well documented opinions in all the previous courts, from the Lycoming County Orphans' Court through the Third Circuit Court of Appeals, lies the foundation upon which this case must finally rest, and the welfare of the three (3) minor boys be finally recognized and their future stability emphasized.

The Pennsylvania Supreme Court speaking through Justice Samuel J. Roberts, writing for the majority, dealt directly with the arguments advanced by Petitioner in

the state courts of Pennsylvania, and now the lower Federal courts, as well as in her present application to this Court. A reading of the Pennsylvania Supreme Court's decision contains the strongest arguments for denial of the relief prayed for in Marjorie Lehman's Petition, as recognized by the Third Circuit opinion herein.

Section 311(2) of the Pennsylvania Adoption statute allows termination of parental rights for children whose essential needs have not been met, based upon facts as presented showing that the needs cannot or will not be met by a parent. The Pennsylvania Supreme Court deals at length with the manner in which a vague statute may offend the Constitution, as enunciated in the cases of Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972), and Alsager v. District Court of Polk City, Iowa, 406 F. Supp. 10 (S.D. Iowa 1975), aff'd in part, 545 F.2d 1137 (8th Cir. 1976). (In Re: William L., 383 A.2d at 1232) The Pennsylvania statute withstands this vagueness attack. (See also, State v. Mills, 629 P.2d 861, 865, fn. 6 (1981)).

Justice Roberts specifically excludes the possibility that insufficient notice is present since the parent's inability or unwillingness must be affirmatively demon-

strated and the causes be irremediable. (In Re: William L., 383 A.2d at 1232-33) Secondly, the concern for arbitrary and discriminatory enforcement is negated by a State's right and duty to protect its weaker members, such as infants, and the legislature's policy protecting the family as reflected in the Pennsylvania Juvenile Act as well as the Adoption Act. (Pa. Juvenile Act of 1972, 11 P.S. §50-101, now codified at 42 Pa. C.S.A. 6301, et seq.; In Re: William L., 383 A.2d at 1241). The Pennsylvania Court emphasized landmark and recent Supreme Court decisions that a child living in his own home will not be removed, as long as his essential needs are being met, (In Re: William L., 383 A.2d at 1234-35), as did the Third Circuit (Lehman, 648 F.2d at 152). Thirdly, the Pennsylvania court rejected the argument that First Amendment values were violated by the statute, in that the Court is speaking to "essential" and "necessary" needs of the child which are not being met. (In Re: William L., 383 A.2d at 1234; see also, In Re: Geiger, 331 A.2d 172, 459 Pa. 636 (1975)).

Petitioner would require that a state show that serious harm through a "high and substantial degree of misconduct" by a parent would be necessary prior to the Court ordering termination of parental rights. This ar-

gument was specifically submitted and argued before the Pennsylvania Supreme Court. The Court rejected this argument, with due regard to firm Supreme Court decisions, and its own determination. (See In Re: William L., 383 A.2d at 1236-37) As Justice Roberts points out, "this contention was expressly rejected in In Adoption of R.I., 361 A.2d 294, 468 Pa. 287 (1976)" (In Re: William L., 383 A.2d at 1237).

The section of the Pennsylvania statute attacked herein, P.S. §311 (2), as interpreted by the Pennsylvania Courts allows parental rights to be terminated entirely without regard to usual concepts of willfullness or fault on the part of the parent, and deals with those who cannot care for a child, as well as those who will not. (See also, In Re: D.L.R., 432 A.2d 196, Pa. (1981)). It is well recognized that the responsibility of performing parental duties can be met when reasonable arrangements are made for the temporary care of a child; however, the true test and inquiry of a Court is whether a parent has utilized those resources at her command in overcoming obstacles which temporarily preclude personal supervision of the child's welfare. (For example, In Re: Howard, 360 A.2d 184, 468 Pa. 71 (1976); In Re: Cassen, 326 A.2d 377, 457 Pa. 525

(1974); McCray Adoption Case, 331 A.2d 652, 460 Pa. 210 (1975); Ellerbe v. Hooks, 416 A.2d 512, 514, 490 Pa. 363 (1980)).

Petitioner in this phase of her argument cites the possibility that an adoption would short-circuit and end any right to review under the federal habeas corpus statute. Indeed, this is a recognition by Marjorie Lehman through her attorneys that finality in the decision concerning her former sons, and through them all other minor children similarly situated, can best be served by adoption. However, while the prospect of further ordained court appeals are available, an agency or a private individual could not freely and in good conscience, and under proper sequence of law go forward with such adoption proceedings.

This shallow reasoning of the Petitioner is further hampered by the reality that an agency is only one of several parties who may initiate involuntary termination proceedings in state courts of Pennsylvania and other states. The Pennsylvania Adoption Law states, as follows:

> "A petition to terminate parental rights with respect to a child under the age of 18 years may be filed by (i) either parent when

> termination is sought with respect to the other parent, (ii) an agency, or (iii) the individual having custody or standing in loco parentis to the child and who has filed a report of intention to adopt required by Section 331." (1 P.S. Section 312; now, 23 Pa. C.S.A. Section 2512 (a)).

The acknowledgment made that an adoption under state law could make a Petition filed under the federal habeas corpus statute moot, (Petitioner's Brief, Page 67) is the first time that this suggestion has been raised in the long judicial history of this case. In a large sense, Petitioner's counsel is urging a type of disrespect for American law and practice, and even undercutting a litigant's right of appeal prior to final action by the courts.

In fact, it is the Respondent's respect for the rule of law and Marjorie Lehman's right of appeal that no adoption has taken place. Prior to the expiration of any appeal deadlines and procedures, it was deemed inappropriate for adoptions to be pursued for these three Lehman boys. This Court should not penalize these boys because of the Agency's respect for the natural mother's attorneys' right to carry on this appeal. The proper course is the rejection of federal habeas corpus

jurisdiction, which in itself would lead to earlier adoption procedures being appropriate in similar cases to this one.

The Pennsylvania legislative comments to the 1980 Act confirm that "an agency-petitioner is not required to plead and prove that an adoption is presently contemplated or that a person with a present intention to adopt exists." (1980 Source and Comments, 23 Pa.C.S.A. §2512; see also, In Re: B.E., 377 A.2d 153,474 Pa.139 (1977) [adoption necessary when one parent seeks termination to another]). Present adoptions were available for the Lehman boys in 1976, and presumably remain today, as the boys remain in stable foster homes, with parents willing to adopt. In reality, there are waiting lists of prospective adoptive parents on record with public agencies, such as Respondent herein. Therefore, there is no scarcity of prospective adoptive parents once the legal hurdles are cleared away. However, as expressed in the Sylvander case:

> "A child...has no such control over the litigation in which he is enveloped...(and he) remains in limbo pending a final decision...since his availability for adoption is clouded." (Id., 584 F.2d at 1112.)

Again, Respondent urges the Court to note the thorough analysis of the Lehman and Sylvander courts that the full range of child custody matters would be ushered in with the acceptance of habeas corpus jurisdiction in termination matters. (Lehman, 648 F.2d at 143, 151, 156; Sylvander, 584 F.2d at 1112-3; see also, Davis v. Page, 640 F.2d at 607.) Children would become mere pawns on a vast array of Federal district court chessboards. Thereby, any suggestion that federal habeas corpus can be available to only test matters involving state or county agencies, and not to include private termination and custody matters between individuals, is ill-advised and does not take account of the totality of the circumstances that face the courts now and in the future.

4. The granting of federal habeas corpus jurisdiction would interfere substantially with legitimate state interests, and the balance of comity between federal and state courts.

Petitioner Marjorie Lehman acknowledges that a state, such as Pennsylvania, is properly concerned that children of "non-salvageable families be provided an opportunity to experience adoptive family life." (Pe-

titioner's Brief, Page 72) However, in order to buttress this argument Petitioner's attorney again attacks Pennsylvania Adoption statute and purported federal constitutional standards. Directly, this litigant had the opportunity to properly put this constitutionality issue before this Court in 1978, but for strategic purposes did not pursue that route. It is even acknowledged that "the ultimate issue whether Petitioner should remain as a parent of her children must be decided, not by federal judge, but solely by the courts of Pennsylvania." (Petitioner's Brief, Page 73) The state courts through their local Orphans' Court divisions, such as Lycoming County, Pennsylvania, and the judges that sit thereon are uniquely qualified to make determinations on child custody matters. (See In Re: Burrus, 136 U.S. 586, 10 S.Ct. 850 (1890)) Petitioner-mother's attorney appears to be arguing that federal habeas corpus is the only forum open in child custody matters that are decided by a state court. No party merely asserting a federal right is entitled to an "unencumbered opportunity" to litigate that right in a Federal District Court. (See Allen v. McCurry, 101 S.Ct. at 419.) Judge Garth reviewed the viable alternatives for federal jurisdiction under 42 U.S.C. Section 1983, as well as the direct appeal ap-

plicable from state court determination to this court. (Lehman, 648 F.2d at 144 to 146, 154.)

If there were unconstitutional elements in the 1970 Pennsylvania statute as alleged by the Petitioner, this matter was ripe for evaluation and decision by this Court in January, 1978, not now. Marjorie Lehman had the right to direct appellate review by this Court following the determination by the Pennsylvania Supreme Court on January 31, 1978, and not merely to take a chance at acceptance of Certiorari by this Court, which was the procedure followed. (See, 28 U.S.C. §1257 (2); Lehman, 648 F.2d at 144; Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S. Ct. 1200, 1209, 43 L.Ed.2d 482 (1975)).

Indeed, it was a strategic decision by the present counsel for Marjorie Lehman in 1978, not to pursue a direct appeal, but to file a Writ of Certiorari. This was acknowledged during the argument before the Third Circuit Court of Appeals, as a means to escape the res judicata effect of an appeal of Justice Robert's decision, through the proposed filing of the present habeas corpus petition.

All issues involving the alleged unconstitutionality of the Pennsylvania statute were sharply focused in Justice Robert's opinion from the Pennsylvania Supreme Court,

and the direct merits were properly before the Court at that point. (See Sylvander, 584 F.2d at 1108) This aids this Court in focusing on a case brought to it on its merits in which a state appellate court is making determinations involving federal constitutional issues. Additionally, immediate review of this Lehman case would have properly served all parties involved, including the mother, the three boys, and even the Pennsylvania Legislature in preparing the 1980 Adoption Act. Since 1978, Justice Robert's decision has become a firm foundation upholding the constitutionality of the adoption statute, and balance between parents and children, in Pennsylvania.

A second route thoroughly discussed in the Third Circuit decision is through reservation of alleged unconstitutional issues under, 42 U.S.C. §1983 (1976). (See Lehman, 648 F.2d at 145)

The Third Circuit Court of Appeals follows the Second and Seventh Circuits in the case of New Jersey Education Association v. Burke, 579 F.2d 764, cert. denied, 439 U.S. 894, 99 S. Ct. 252, 58 L.Ed.2d 239 (1978), in holding that "a state court judgment foreclosures a Section 1983 litigant from raising grievances in federal court only if such claims have been pressed before, and

decided by a state tribunal." Id., 579 F.2d at 774. (See also, Joseph L. v. Officer Judicial Support, etc., 516 F. Supp. 1345, 1347 (1981); Allen v. McCurry, Supra).

As set forth in Joseph L. v. Officer Judicial Support, etc.:

> "The Burke Court took great pains to distinguish the application of res judicata in Section 1983 actions with the doctrine's application in other settings. In a suit brought under Section 1983, res judicata will bar only those claims that were "actually decided by the state tribunals," not those that "could have" or "might have been raised before the state court" but were not." Id., 516 F. Supp. at 1347.

As pointed out by Judge Garth, it is not required that a litigant, such as Ms. Lehman should reserve such claims; however, the alternative is present and could lead to a more direct and expressed decision on such alleged unconstitutional issues. (Lehman, 648 F.2d at 145.) This would preclude, through res judicata, having a claim determined both in state and federal courts, a right which the First and Third Circuits have not approved, through the rejection of habeas corpus jurisdiction.

As very concisely stated by Judge Brown of the Fifth Circuit, in his dissenting opinion in the Davis v. Page matter:

> "Domestic relations is an area of law in which federal courts traditionally have deferred to state courts....federal courts have always preferred to abstain from answering questions of law, such as those contained in domestic relations suits, which the states are by nature best equipped to deal with.... (Citations omitted) Id., 640 F.2d at 605. (See also Sylvander, 584 F.2d at 1112; Lehman, 648 F.2d at 143, 144).

The consideration of comity and judicial restraint are bolstered by this deferral to state courts as expressed by Judge Brown. Undeniably, Marjorie Lehman had and took full opportunity to present her federal constitutional claims in the state proceedings. (In Re: William L., 383 A.2d at 1231 to 1237; see also, Allen v. McCurry, 101 S.Ct. at 415).

Arguably, this Court has shown restraint and directed the federal judiciary to avoid interference with state court proceedings and accept jurisdiction only when (a) the claimants have no opportunity to present their federal constitutional claims in state proceedings, or (b)

there is bad faith conduct by the state, or (c) the challenged state statute is wholly and flagrantly violative of express constitutional prohibitions, in whatever manner and against whomever an effort might be made to apply it. (Moore v. Sims, 442 U.S. 415,99 S.Ct.2317,60 L.Ed.2d 994 (1979); Juidice v. Vail, 430 U.S. 327, 97 S. Ct. 1211, 51 L.Ed.2d 376 (1977); Huffman v. Pursue, Ltd., Supra; Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)). The facts herein do not warrant federal intervention and buttresses due regard for comity in this termination matter.

The Supreme Court in this session has provided further guidelines in the issues of Federal-state realms of judicial authority. In the case of Fair Assessment in Real Estate Association, Inc. v. McNary, No. 80-427, ____U.S.____, 50 U.S.L.W. 4107,(argued 10/5/81 and decided 12/1/81),Justice Rehnquist held that the principle of comity barred a Section 1983 action involving property taxes, and dictated federal non-intervention in this particular area. A central element set forth by Justices Rehnquist and Brennan is the fact that Congress has not expressly said that civil rights damage suits may be brought in this area of law. Additionally as stated by Justice Brennan:

> "(t)he power to control the jurisdiction of the lower federal is assigned by the Constitution to Congress, not to this Court. In its haste to rid the federal courts of a class of cases that it thinks unfit for federal scrutiny the Court today departs from this fundamental precept." Id., 50 U.S.L.W. 4024.

This also speaks centrally to the issue involved in this Lehman matter, in that this Court is being asked to open the new range of cases in which the Lower Federal Courts will have to take full testimony, evaluate, and decide this very sensitive area of family law. Once more these issues involving federal-state courts and the valid principle of comity must be carefully screened so as not to infringe upon the valid functions to be served by both. (Younger v. Harris, Supra). As stated by Chief Judge Seitz of the Third Circuit, "(i)f there is to be such a major departure from traditional uses of federal habeas corpus to challenge state – court judgments, it is not unreasonable to await a congressional directive on the matter." (Lehman, 648 F.2d at 156; see also, Ridgway v. Ridgway, 50 U.S.L.W. 4006, 4408 (1981); Note: "Federal Habeas Corpus and Child Custody Cases", 67 Virginia Law Review 1419 (September, 1981)). A firm basis set forth by Judge Garth is that the opportunity presented

by federal habeas corpus to reassert a claim already litigated in state courts is more offensive to principles of comity than other federal remedies available to challenge parental right termination.

In the last few pages of Petitioner's Brief (Petitioner's Brief, pages 85-6), the suggestion is raised again of an adoption making a habeas corpus petition moot, if a federal district judge would so determine. No worse limbo could be wrought upon a child. A child who could, after presumably a period of time in a foster home, followed by a state court decision of parental rights termination, and appropriate state appellate court procedures, be adopted, and thereafter await decision by a federal district judge after a petition and answer filed and evidentiary hearing held, as to whether his adoption is valid.

Judge Brown's fear, as expressed in his Davis v. Page dissenting opinion, may be realized when he states:

> "...I am not convinced that the interests of family and child will be significantly fostered by permitting actions such as these to be litigated in two sets of courts---first state, and then federal, or worse, perhaps simultaneously." (emphasis added) Id., 640 F.2d at 607.

Petitioner's suggestion of adoption making a habeas corpus petition moot, foretells a race to the courthouse, disregarding appeal rights, with the child's well-being and emotional stability hanging in the balance.

This Court has the judicial responsibility at this time to reject extension of the federal habeas corpus statute into such state proceedings, and thereby assure that equality and justice for all under the American system will include minor children, similarly situated as the three Lehman boys have been, and are, in Lycoming County, Pennsylvania. A primary purpose of a state's parental rights termination statute is to expedite proceedings in order to reduce unnecessarily protracted stays in foster care for children removed from their parents.

Petitioner's accusation of "foot dragging" (Petitioner's Brief, Page 86) is simply not the situation in this matter, nor circumstances present in Pennsylvania. Where the welfare of a child is concerned, and dispute arises between a natural parent and foster parents, the courts have shown themselves willing to react and expedite a determination. See Commonwealth ex rel Grimes v. Yack, 433 A.2d 1363,____Pa.____(1981), in which a natural mother withdrew her consent for an adoption

within six months. It may not validly be said that the caseworkers involved with the Lehman family for the several years prior to termination were "foot dragging" or not working to reunite the family, if appropriate. (See In Re: William L., 383 A.2d at 1242; Interest of LaRue, 366 A.2d 1271, 244 Pa. Super 218 (1976); In Re: I.R.A., 410 A.2d 755, 487 Pa. 563 (1980).

The burden of proof assumed by a Petitioner in a state involuntary termination petition is a very demanding one, and involves the state's interest in requiring parents to recognize and exercise their "high duty", which must be counterbalanced with the efforts to maintain and strengthen the family as the most important institution in raising a child. A child and his well-being is not a chattel which a natural parent can possess or dicker with, but must be recognized as a vibrant and mature individual with very basic biological, emotional and psychological needs. These basic human needs are initially presumed and intended to be provided by a natural parent in a loving and stable home environment; however, this is too often not the reality of life. Therefore, governments have instituted and labored over statutes and standards by which conduct is to be measured, whether by a private individual or, in this

instance, a county social agency. Therein, are persons trained to aid others in recognizing and striving to meet these minimal standards of parental action, duties, and responsibilities. These persons are guided by legislative mandates, their lifelong experience, and their decisions and actions are overseen in particular instances by a state court.

This Pennsylvania legislation, upheld by the seminal decision herein (In Re: William L., Supra), fairly puts the parent on notice that parental rights can be terminated when there is an abandonment or refusal to provide, or incapability of providing essential parental care. Additionally, definite testimony was shown in this Lehman matter that the causes and conditions of the incapacity could not be remedied. This language of the Legislature, coupled with the array of Pennsylvania cases which develop the elements of what parental duties and responsibilities consist of, give very definite guidelines for interpretation of the law when applied to particular factual circumstances. Thereby, the Pennsylvania Supreme Court in January of 1978 upheld the constitutionality of this very statute and based their holding upon a firm gridwork of decisions from this Court which have been cited by both parties again in 1982. The direct appeal to

this Court of the alleged unconstitutionality of the statute was waived by Marjorie Lehman's same attorneys herein, and should not now form the foundation for collateral attack to justify federal courts taking jurisdiction under the habeas corpus statute.

As Judge Levin H. Campbell, Judge of the First Circuit Court, in the Sylvander decision states:

> "The final answer is not to be found between the covers of treatises on federal law but requires a judgment as to ethical, societal and perhaps even religious values at stake in weighing the rights of the natural parent against the putative well-being of the child." Id., 584 F.2d at 1109.

This Court is urged to affirm the decision of the Third Circuit, and maintain the proper roles of the state and federal courts in these parental rights termination matters.

CONCLUSION

IN SUMMARY, it is urged that the great Writ of Federal Habeas Corpus has not been and should not be applied and extended to a federal constitutional challenge by a mother on behalf of minor children that arose

from a decree of involuntary termination of parental rights leading to adoption under state law. Initially, the natural mother has no legal standing to bring such an action on behalf of minor children who are not "in custody" pursuant to the dictates of federal statutory and decisional law. An extension of federal habeas corpus jurisdiction into this parental termination area would lead to intervention into intra-family disputes, and transcend the evolving balance between federal and state interests.

WHEREFORE, Respondent prays that the United States Supreme Court hold that habeas corpus jurisdiction does not extend to this matter involving the termination of parental rights under state law.

Respectfully submitted,

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Attorney for Respondent

Dated: January 25, 1982

December 20, 1976

SUMMARY: LEHMAN VISITATION PETITION

The subject of resuming visitation for Marge Lehman with her three sons has been discussed with each of the boys and/or their foster mothers so that their feelings and wishes may be taken into consideration by the court before a final decision is made. The last official visit for the Lehmans was on May 4, 1976, afterwhich the court ruled in favor of terminating Marge Lehman's parental rights and these visits were discontinued. (Note: This latest petition states that visits were held both in July and August of 1976, but neither the boys, their foster mothers nor our records could verify this.)

On 11/22/76, I talked with Frank Lehman about having visits with his mother again. Frank will be thirteen on 12/22/76 and is the oldest of the Lehman boys. Frank said it didn't matter to him whether or not he had any more visits with his mother. He added that it wouldn't bother him if he didn't see her again. I asked Frank if he enjoyed his visits before and all he said was that he and the other boys always ended up wrestling and fighting with each other. Frank made it very clear that he never wants to live with his mother again and feels that it would be better if he could be adopted by some family. Frank's foster mother told me that Frank was usually upset by these visits and was quite unruly and unmanageable afterwards.

On 11/17/76, I talked with eleven year old Billy Lehman about visitations. Of all three boys, Billy seemed to be the most upset by the possibility of having to re-establish any contact whatsoever with his mother. Billy

considers himself to be a very active member of his foster family, and can hardly wait to be adopted by them. His foster parents have told him all they are waiting for is a final decision from the courts. The foster mother and Billy himself reported that he would become extremely disturbed and upset several days before and after a visit. Just discussing this matter with Billy was enough to worry him.

On 11/22/76, I made a visit to the foster home of seven year old Mark Lehman. Mark was quite young when he was removed from his mother's home and, according to the foster mother, has never expressed any close feelings for his mother or brothers and sister. She said he never mentions any of them except for those days he visits with them...Mark's foster family is also waiting to adopt him.

Present agency policy interprets termination of parental rights by the local court as a final decision and will uphold all that a termination implies until such termination is reversed by a higher court.

SUBMITTED BY: /s/Nancy L. Wollett
Nancy L. Wollet, Caseworker
Lycoming County Children's Services

NLW/elg

EXHIBIT "A"